Price's Pic-Pac Supermarkets, Inc. *and* Food Store Employees Union, Local 347, United Food and Commercial Workers International Union, AFL-CIO-CLC. Case 9-CA-14633

June 19, 1981

DECISION AND ORDER

On January 5, 1981, Administrative Law Judge Claude R. Wolfe issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief. The General Counsel also filed exceptions and a supporting brief and Respondent filed a brief in response thereto.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We herein correct an inadvertent error in the Administrative Law Judge's Decision. In par. 3, sec. III,B,1, the finding as to Mark Hurd's unlawful discharge should refer to Sec. 8(a)(3), not Sec. 8(a)(1).

We agree with the Administrative Law Judge that by November 15, 1979, the Union had obtained valid authorization cards from 22 employees in the alleged, and admitted, appropriate collective-bargaining unit. We find it unnecessary to pass on the Administrative Law Judge's exclusion from the unit of Sam Gross, Jr., Tammy Justice, Elizabeth Layne, Danny Troxell, and Deloris Hicks, whom Respondent would include. Since there is no dispute that there are at least 37 employees in the unit the inclusion of the 5 employees at issue would not reduce the Union's support, 22 employees, to less than a majority.

Respondent excepts, *inter alia*, to the Administrative Law Judge's finding that it violated Sec. 8(a)(3) and (1) by discharging Jewell Cockerham on November 16, 1979, on the ground, *inter alia*, that it did not become aware of Cockerham's union activity until after her discharge. The record reveals, however, that Cockerham, on November 13 and 15, 1979, distributed and received authorization cards while at her checkout counter work station. Since Respondent kept the checkout area under constant closed-circuit television monitoring, we infer that Respondent had direct knowledge of Cockerham's union activity prior to her discharge.

[2] We herein adopt the Administrative Law Judge's recommendation of a remedy which would require Respondent to recognize and bargain with the Union as the representative of its employees in the unit found appropriate for collective bargaining. *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969). In this case, Respondent has engaged in a campaign of widespread intimidation and coercion of its employees and began this effort as soon as it learned that the Union was organizing its employees. Its campaign included, *inter alia*, the unlawful discharge of three employees, unlawful interrogation and polling of many employees, numerous threats of store closure if the Union won, a statement that one employee was discharged for his union activities, surveillance of a union meeting, and threats of discharge for employees attending union meetings. It is difficult to imagine any conduct on the part of an employer which would more thoroughly cripple an organizing drive or render a Board election futile. We conclude that the unfair labor practices committed here, in violation of Sec. 8(a)(3) and (1), were so coercive that a *Gissel* bargaining order is the only effective remedy for them.

Chairman Fanning would in this case date the bargaining order prospectively rather than as of November 16, 1979, when Respondent commenced its unfair labor practices. See his partial concurrence in *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93, 97 (1977).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Price's Pic-Pac Supermarkets, Inc., Prestonsburg, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.[3]

[3] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge: This case was heard before me at Prestonsburg, Kentucky, on July 22 and 23, 1980. The complaint alleges numerous independent violations of Section 8(a)(1) of the National Labor Relations Act, as amended, as well as six discharges in violation of Section 8(a)(3). Respondent denied these allegations.

Upon the entire record,[1] including my observation of the demeanor of the witnesses as they testified, and with due regard for the able post-trial briefs submitted by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

Jurisdiction is not in issue. The complaint alleges, Respondent admits, and I find that Respondent meets both the Board's $500,000 retail standard and its $50,000 direct inflow standard for the assertion of jurisdiction.

II. LABOR ORGANIZATION

The Union, Food Store Employees Union, Local 347, United Food and Commercial Workers International Union, AFL-CIO-CLC, is a labor organization.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Context*

Union activity commenced among the employees of Respondent's Prestonsburg, Kentucky, grocery supermarket on November 7, 1979,[2] when Union Organizer Jodie Ward, while in the store as a customer, suggested to Jewel Cockerham, a cashier, that the employees needed a union. Thereafter, Cockerham discussed it with several other employees, including Linda Bishop and Shirley Ousley, who agreed to a meeting with the Union. Cockerham arranged with Ward to hold a meeting of employees on November 12 at the Plantation Motel; 14

[1] By order of August 7, 1980, I rejected Resp. Exhs. 5 and 6, but they have been erroneously marked as received.

[2] All dates are in 1979.

employees[3] attended that meeting. Ward explained the benefits of a union, and asked them to sign union authorization cards if they wanted the Union to represent them. All 14 did so. Respondent contends that eight[4] of these cards have not been properly authenticated. I do not agree. The clear preponderance of the evidence establishes that all 14 were present and that they then and there signed an attendance roster as well as their individual cards. One of those whose card is challenged, Teresa Gibson, testified that she signed both the roster and a card at that meeting. Any contention that the other seven were not present and signed is unsupported by even a modicum of evidence. The cards, on their face, explicitly authorize the Union to represent the signer, and I find that all 14 cards signed on November 12 are valid designations of the Union by those whose signatures appear thereon. Eight more cards were signed on November 13 and 15.[5] Respondent challenges the authenticity of the cards signed by Billy Ray Ousley and Haskell Collins on the ground the receiver of the cards, Jewel Cockerham, did not actually see them sign. Both gave cards to Cockerham. It is true she did not see them sign, but it is well established that the return of a signed card by the signatory for delivery to the Union is sufficient to authenticate the card.[6] Accordingly, the cards Ousley and Collins gave to Cockerham are valid designations.

The complaint alleges, Respondent admits, and I find that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees employed by Respondent at its Prestonsburg, Kentucky facility, excluding all office clerical employees, and all professional employees, guards, the store manager, the assistant store manager, and all other supervisors as defined in the Act.

The General Counsel contends there were 37 employees in the unit on November 16, and that the Union then represented a majority of these employees. Respondent would include a total of 42. Respondent concedes, and I find, that the 22 card signers were members of the unit. It obviously follows that on November 15 the Union had been designated by a majority of the employees in the above unit as their collective-bargaining representative, even if Respondent's claim of 42 employees in the unit is accurate.

Respondent contends that, in addition to 35 employees,[7] about whom there is no doubt as to inclusion, Ell Arnett, Elizabeth Layne, Danny Troxell, Deloris Hicks, Tammy Justice, Nancy Crum, and Sam Gross, Jr., should also be included. The General Counsel would exclude these 7 as well as David Keel and Norma Ousley, and contends there are 37 in the unit.

I find that the 35 employees named by Respondent are indeed in the agreed-upon unit.[8] The General Counsel does not name the 37 he thinks should be in the unit, but I am convinced from the record and the tenor of his post-trial brief that he would agree with Respondent that the 35 named by Respondent are in the unit.

Norma Ousley[9] worked 15.25 hours during the week ending November 3, and appears on no later payroll register in evidence. Respondent's corporate secretary-treasurer and store manager at Prestonsburg, Phillip Whitten, testified that Norma Ousley worked a day or two as a new cashier, made a lot of mistakes, and was laid off indefinitely until such time as she might be called back and given further training. Whether or not she will ever return is speculative at best, and I find that the available evidence does not warrant a conclusion that she had any reasonable expectancy of future employment after the week ending November 3. I therefore conclude she was not a member of the unit at the time of the Union's organizing campaign or thereafter through the time of the hearing before me, and should be excluded therefrom. Neither party seeks to include her.

I credit Phillip Whitten's uncontroverted testimony that *Nancy Crum* was a full-time 50-hour-a-week meatcutter who cut her finger off at work prior to the onset of the union campaign, and has thereafter been on workmen's compensation until such time as she is released to work by a physician. Although I agree with the General Counsel that Respondent's position on Crum would be stronger if buttressed by some documentary evidence, I do not agree that the absence of her name from payroll registers is significant. Only those who were paid wages appear on the registers, and all that can be drawn from them is that she received no wages, which is consistent with Respondent's claim that she is on workmen's compensation. The fact that her name does appear on the payroll timesheet, a different document from the register, for the week ending November 17, with zero wages shown, is likewise of little probative value. The General Counsel developed nothing to rebut Whitten's testimony. On balance, I conclude that Respondent has the better of the evidence, and find Crum is a unit employee absent due to injury with a reasonable expectancy of continued employment upon her recovery.

Sam Gross, Jr., *Tammy Justice*, and *Elizabeth Layne* work only as they are needed, may refuse to come in to work when called, and yet will be called later when available. Deloris Hicks, who compiles the payroll, credibly testified that neither Layne nor Justice worked at the store more than three or four times for brief periods in the year preceding the hearing. Hicks also credibly

[3] Teresa Gibson, Vanessa Music, Shirley Ousley, Linda Bishop, Jewel Cockerham, Randy Wilcox, Tim Hubbard, Artie Webb, Jr., Dwayne Newberry, Mark Hurd, Larry Prater, Phillip Meade, Jesse Meade, and Lorraine Hackworth.

[4] Vanessa Music, Dwayne Newberry, Artie Webb, Jr., Randall Wilcox, Timothy Hubbard, Lorraine Hackworth, Teresa Gibson, and Linda Bishop.

[5] Tim Allen, John A. Davis, Billy Ray Ousley, Karen Ramey, Debbie Stephens, Suette Spradlin, Haskell Collins, and Sherry Crum.

[6] See, e.g., *McEwen Manufacturing Company and Washington Industries, Inc.*, 172 NLRB 990, 992 (1968).

[7] [Names of 35 employees omitted from publication.]

[8] The 22 card signers are among these 35.

[9] Although Norma Ousley and David Keel were not alluded to in Respondent's post-trial brief, they have been put in issue by the General Counsel's brief, and I believe it appropriate to now resolve their status insofar as the evidence permits.

testified that Sam Gross, Jr., did no work at the store, but worked away from the store for Taylor Price.[10] Taylor Price testified that he used Gross to clean up the parking lot, cut grass, work at a warehouse located in a building alongside Price's home, and do anything that Price needed done, all in order to help out Gross' father. The evidence before me, without more, fairly requires a conclusion that the employment of Gross Jr., Layne, and Justice was sporadic and casual and established no pattern of regular continuing employment. I therefore find they should be excluded from the unit.

Ell Arnett has not been shown to be a statutory supervisor. Whether he be designated "stock manager," "lead man," "stock leader," or "boss," all of which appellations were applied to him by one witness or another, is not controlling. His duties and authority are the important items. There is no credible substantive evidence that he possesses any of the authorities enumerated in Section 2(11) of the Act. I credit his testimony that, although he reported to Whitten that employee Mike Baker had been coming in late, it was Whitten, not he, who decided to and did fire Baker.[11] Mark Hurd's testimony, in response to a leading question, is entitled to little weight where he testified that on occasions, the number of which he cannot remember, when he "might have to take time off from the job, leave at a certain time, or perhaps get permission not to go in until a certain time," he would talk to Bill Ousley or Ell Arnett, and if it was to Arnett he would get a decision. Considering that the parties agree that Ousley is in the unit and the evidence at least arguably indicates that Arnett may have ranked below him in terms of authority, however ephemeral that authority might be, as well as the lack of any corroborating evidence for Hurd's vague testimony, I am persuaded that Hurd's testimony is far too gossamer to rely on. All the evidence warrants is a finding that Arnett is a stock clerk who is paid more and acts as a leader for newer employees because of his superior experience, but whose duties are otherwise substantially identical to those of the other stock clerks. I conclude that Arnett is a unit employee.[12]

Danny Troxell worked during the weeks ending November 3 and 10. His name appears on the payroll timesheet for the week ending November 17, but he did not work that week or thereafter at Prestonsburg. Troxell is a college student whose absence from work the last 2 weeks in November is attributed by Phillip Whitten to a conflict with school-related matters. He started working at Respondent's Martin, Kentucky, store in December. It would appear from his school-related absence that his availability for work was subordinate to school-related claims on his time. This being the case, it follows that his part-time work could not properly be classified as "regular" because it was unpredictable and subject to change when Troxell's student status required it. The paucity of evidence with regard to Troxell makes it impossible to say with absolute certainty what his status was, but that evidence which is before me implies he was primarily a student and secondarily a casual employee as his school schedule permitted. Moreover, it is arguable, although somewhat speculative, that when Troxell left work for the last time the week of November 17 he had no plan to return. He did not return to Prestonsburg, but went to Martin. This suggests, in the absence of other reasonable explanation, that there was then no work for him at the Prestonsburg store. This hypothesis derives some inferential support from the fact that his college is located in Prestonsburg, and it is logical that he would likely prefer working near his school rather than another city. For these reasons, I find Troxell was a casual employee excluded from the unit.

David Keel was a high school student working after school and on weekends. His name does not appear on Respondent's payroll register after November 3. According to Phillip Whitten, Keel claimed he injured his back and applied for and received workmen's compensation, but quit his employment sometime in December 1979. Neither party adduced any further evidence on his status, and neither seeks to include Keel in the unit. In the circumstances I see no need to speculate further on Keel's unit placement which is not determinative of the Union's majority claim in any event, and I find he is excluded from the unit.

Deloris Hicks spends most of her time in the store offices which are used by managerial personnel and their spouses. She is salaried, has no timecard, and is responsible for computing employees' hours from their timecards. It is also her responsibility to make daily bank deposits of store receipts. Although she relieves cashiers as necessary and occasionally helps carry out groceries, stock shelves, and assists in the produce department, managerial employees and their spouses give similar assistance as needed. On the evidence, I am persuaded that her duties and working conditions are sufficiently different from those of the regular rank-and-file employees to warrant a conclusion that she is an office clerical employee with no substantial community of interest with unit employees, and she is therefore not included within the agreed-upon unit.

With the inclusion of Nancy Crum and Ell Arnett the appropriate unit numbered 37 employees during the week ending November 17, of whom 22 had executed valid union authorization cards. I find that the Union attained its majority status on November 15 and then became and remained the collective-bargaining representative of all employees in the unit.

Against this backdrop, we turn to an examination of Respondent's conduct from November 16 through November 20.

[10] I do not credit Phillip Whitten's testimony on these employees where it might appear to contradict Hicks. Hicks was a more believable witness than Whitten in terms of general demeanor and straightforwardness of testimony.

[11] To the extent that Shirley Ousley's testimony suggests a contrary conclusion, it is not credited.

[12] See *Tonnor Brothers Foods, Inc. d/b/a Big T Food Store*, 200 NLRB 409, 411-412 (1972), where an employee with duties and authority like that of Arnett was found to be nonsupervisory.

B. *The 8(a)(1) and (3) Violations*

1. Conduct of Respondent's president, Taylor Price

On November 16, stocker Mark Hurd[13] went into the store to shop, after he had finished work for the day. Taylor Price called him into the stockroom and asked if he was for the Union. Hurd told him "all the way." Price responded that he would close the doors before he would see the Union go in, and gave Hurd until the morrow to reconsider his position on the Union.

At 8 a.m., on November 17, Hurd started to work. About noon he was called to the stockroom where Price asked if he had made up his mind. The query obviously related to Hurd's union feelings. When Hurd said he had, Price asked what he had decided. Hurd replied again that he was for the Union all the way. Price, apparently angered and perhaps surprised, cursed and told Hurd to hit the clock and leave. Hurd's only comment was, "Well," whereupon he clocked out.

I find that Respondent, by Taylor Price on November 16, coercively[14] interrogated Hurd with respect to his union activities; attempted to get him to change his mind by ominously giving him overnight to think it over; and threatened to close the store rather than permit a union to represent his employees. Each of these three acts,[15] individually as well as collectively, violated Section 8(a)(1) of the Act. On November 17, Taylor Price again violated Section 8(a)(1) by coercively interrogating Hurd, and then violated Section 8(a)(1) by discharging him because he remained staunch in support of the Union. The conclusion that Hurd was unlawfully discharged is further confirmed by the announcement of Store Manager Whitten to 20 or 30 employees, on November 18, that Hurd had been discharged because of his union activities.

On the evening of November 19, several employees met with the Union at the home of cashier Jewel Cockerham, who had been discharged on November 16. As Hurd, Phillip Meade, and Jesse Meade left at or about 10:30 p.m., they observed Taylor Price's automobile following them and flashing its lights. Taylor Price was the driver, and Jeff Buchanan, manager of the Price store at Martin, Kentucky, was a passenger therein. Frightened, the Meades and Hurd returned to Cockerham's where she and they observed Price drive the automobile round and round the block until approximately 2:30 a.m.[16] It is clear from other evidence related later in this Decision that Respondent was aware there was going to be a union meeting at Cockerham's house, and I find that Respondent, by Taylor Price, did engage in unlawful surveillance of its employees' union meetings and activities by following them and circling their meeting place. I also conclude that Price's presence at the gas station when the employees departed Cockerham's home was planned rather than fortuitous, and was part of a scheme of surveillance (of the meeting) and then intimidation by following union adherents. These acts violated Section 8(a)(1) of the Act.

Shirley Ousley credibly testified that, on November 17, Taylor Price told her, while they were alone in the breakroom, that if the Union came Respondent would close the store, and if she intended to support the Union to walk out of the store now. Price's first statement is a threat of store closure. The second is a threat of discharge.[17] Both are clear responses to union activity and both violate Section 8(a)(1) of the Act.

In addition to the foregoing, Respondent's agent, Whitten, admits that Taylor Price asked Shirley Ousley on November 17 what kind of meeting the employees were talking about. I have found that Price already knew the employees were engaged in union activity, and his question of Ousley was interrogation designed to elicit information on the content of a union meeting, and therefore violated Section 8(a)(1) of the Act.

2. Conduct of Phillip Whitten

Whitten, respondent's secretary treasurer and store manager,[18] claims that he first became aware of employee meetings on November 16 when Deloris Hicks reported to him that Jewel Cockerham, who had just been discharged, had said her discharge would be discussed at a "meeting." Whitten first placed the discharge of Cockerham between 5 and 6 p.m., but then quickly amended that to between 4 and 6 p.m. I find it took place shortly after 4 p.m. as Cockerham states. Contrary to Whitten's testimony that he did not know union activity was involved in the "meeting," I find that he did. Respondent knew its employees were engaged in union activities by 5 or 6 p.m. at the latest when Taylor Price unlawfully interrogated Mark Hurd. Moreover, the fact that Taylor Price, about 5 or 6 p.m. on November 16, asked Hurd if he was for the Union is substantial evidence that Price, and thus Respondent, was aware prior to the interrogation of Hurd that there was union activity among Respondent's employees. I cannot and do not believe that

[13] I credit Hurd's version because he was the more convincing witness, and note that even Price's version establishes that he was concerned about the Union, was attempting to find out what it and his employees were doing together, and was irritated at Hurd because he (Price) "couldn't get any satisfaction out of him." Price concedes telling Hurd to go home but claims he told him to go for a day or two because Hurd got loud. However, in response to his counsel's question, he testified that he terminated no one *other than Hurd* for union activity. If I were to credit Price, I would yet find violations of Sec. 8(a)(3) and (1) and I have considered his version where it does not contradict Hurd.

[14] Coercion is inherent in a situation where the corporate president, clearly opposed to the Union, subjects a rank-and-file employee to interrogation about his union activity.

[15] The coercive comment bgiving Hurd time to think it over was not specifically alleged, but it is part and parcel of the entire conversation alleged to contain violations of Sec. 8(a)(1), and the content of the conversation was fully litigated.

[16] These facts are derived from a composite of the complementary credible testimony of Cockerham, Hurd, and the two Meades. I do not credit the denials of Taylor Price, noting, *inter alia*, that he did not deny the presence of Buchanan who did not testify.

[17] Threat of discharge by Price is not alleged in the complaint, but Ousley's testimony is credible and uncontroverted, and the matter is closely related to the subject matter of the complaint. *Ackerman Manufacturing Company*, 241 NLRB 62 (1979).

[18] Whitten did not meet the testimony of employees on some incidents, and on others was evasive, circumlocutory, and equivocal. He was not as impressive a witness as his former employees, and I do not credit him in those instances where his otherwise unsupported testimony contradicts rather than complements theirs.

the store manager, Whitten, was kept in the dark about union activity known to Respondent. The practically simultaneous discharge of Cockerham and the interrogation of Hurd raise a fair inference that Respondent knew at the time of Cockerham's discharge there was union activity in the store. A similar inference may fairly be drawn from the fact that there was considerable union activity at the store, consisting of setting up the first meeting of November 12 among employees and solicitation and distribution of union cards on November 13 and 15, within a relatively small unit in what amounts to a family controlled and run store in a small town. In this setting it is highly unlikely employee union activity would go long unnoticed by management.[19] Considering all of the direct and circumstantial evidence on the point, as well as the fair inferences that may reasonably be drawn, I conclude that Respondent was aware of union activity among its employees at the time Cockerham was discharged, and I further find that in view of Cockerham's outstanding activity and Respondent's diligent and systematic efforts to ascertain the identity of union adherents it is quite probable that Respondent knew of Cockerham's activities at the time she was discharged.

Events of November 17

(a) Whitten states that he called employee Teresa Gibson into his office, on a date of which he is not certain, and asked her what kind of meeting employees were talking about. He further testifies that Gibson said she could not lie to him and admitted employees had talked to a man about union representation. Gibson, when called as a witness by Respondent, testified that, some 2 or 3 days after she signed an authorization card on November 12, employee Larry Prater bothered her at work by repeatedly asking her how she would vote. She immediately reported this to Whitten. She denies that Whitten had earlier called her into his office and talked to her about the Union, or that she told him she could not lie to him and had been to a union meeting. Gibson concedes she does not remember a lot of things, and her pretrial affidavit of December 19 contains no reference to Prater bothering her. Whitten relates that Gibson's complaint about being bothered by Prater and Shirley Ousley was delivered on November 17. I am persuaded that the complaint about Prater was made on November 17, because that was the date Whitten angrily confronted him on it.[20] That leaves the other conversation Whitten claims he had with Gibson. I am persuaded that in this instance Whitten has a memory superior to that of Gibson, and did indeed question her about the meeting Cockerham had referred to on November 16. This questioning took place as part of his questioning of a number of employees on November 17, and occurred prior to Gibson's complaint. Whitten's testimony about this first conversation, viewed in the context of Respondent's November 16 knowledge of union activity, admits interrogation into the content of a meeting which Respondent plainly had reason to believe involved a union. This is interrogation of a type prohibited by Section 8(a)(1) of the Act, and I do not credit Whitten's various efforts to pass off his questioning of employees about the upcoming meeting as lawful curiosity.

(b) Whitten called Larry Prater into his office and asked him what he knew about the Union. Prater declined to discuss it and returned to work. About 10 minutes later, Whitten came to Prater's work area with Taylor Price and pointed Prater out as "the only boy that's lied to me." Later, Prater was assigned, through Ell Arnett, to clean out the milk cooler. He had never before been assigned to do so on a Saturday. The job was usually done on Monday morning when there was not so much milk in the cooler. All the milk had to be removed for the cleaning and there were about 1,500 gallons in the cooler on that Saturday. Prater told Arnett the milk would probably spoil by the time the cooler cleaning was completed. Arnett so advised Dale Tackett, the assistant store manager and an admitted supervisor. Tackett said he could not help it because that was the work they had for Prater to do. Prater, after removing some of the milk, decided it was a useless task and went to see Tackett. He told Tackett he was being made to do it because he would not tell anything about the Union. Tackett replied that he was told what to do and had to tell Prater what to do.

Whitten, who had then received the complaint from Gibson that Prater was bothering her about the Union, came to Prater while he was talking to Tackett[21] and told him that if he would not discuss the Union with Whitten he could not talk to anyone else about it. Whitten then threatened Prater with a beating[22] if he continued to talk about the Union, and concluded that he would not fire Prater but he would make him wish he were fired. Prater replied that he quit, Tackett told him to hit the clock, and he punched out and left. I do not credit Whitten's claim that he attempted to deter Prater from quitting. With respect to Whitten's claim that he has an unwritten "standing rule" regarding solicitation, I need only observe that he never explained the rule, the existence of such a rule is supported by nothing more than his incredible *ipse dixit*, and this claim strikes me as a transparent fiction designed to provide a defense Respondent does not have.

Whitten's initial questioning of Prater about the Union violated Section 8(a)(1) of the Act. Whitten's pointing out Prater to Taylor Price as one who lied to him shows his resentment at Prater's refusal to discuss the Union. Prater's assignment to clean the cooler is suspicious but was neither alleged in the complaint nor fully litigated. Whitten's proscription of any talk by Prater about the Union unless he talked to Whitten about it was coercive

[19] I do not agree with the General Counsel that some ambiguous testimony by Taylor Price establishes that through a conversation with employee Hackworth he became aware of Jewel Cockerham's union activity prior to her discharge. Price clearly testified that this conversation occurred after Cockerham was discharged, and I have no reason to discredit him on this point.

[20] This confrontation is detailed below.

[21] Neither Tackett nor Arnett testified regarding this series of incidents, although called by Respondent as witnesses on other matters.

[22] Whether Whitten threatened to whip Prater from one end of the stock room to the other, as Whitten claims, or to beat him until his own mother would not recognize him, as Prater claims, is of no consequence. A threat of physical beating is a threat of physical beating.

interference with a legitimate Section 7 right, in the absence of any valid rule on solicitation, and violated Section 8(a)(1), as did Whitten's threat of physical attack if Prater continued to talk about the Union.

I do not believe that Whitten was provoked as much by Gibson's complaint, which he did not even bother to investigate for verity or give Prater a chance to refute, as he was by resentment at Prater's refusing to inform on union activities. Whitten's adversion to a solicitation rule which does not exist, and a claimed loss of money due to Prater's conversation with Gibson, which loss has not been shown, are pretexts designed to mask his real motive which was to forestall union activity. Whitten's unlawful instruction to Prater to refrain from union activity on threat of physical violence, coupled with his threat to make him wish he were fired, was more than enough to force Prater to quit. Prater was not required to choose between the Union and his job,[23] nor was he required to submit passively to the more onerous working conditions posed by Whitten as a condition of his continued employment. What Whitten was saying is crystal clear: "I will make your job miserable because you're Union." His acts were patently calculated to force Prater off the job, and that he was successful in forcing Prater to quit certainly cannot be condoned by treating Prater as a voluntary quit. Prater was constructively discharged in violation of Section 8(a)(3) and (1) of the Act.

(c) On November 17, Whitten called Jesse Meade to him and told him that Whitten knew he had signed a union card, and if the Union got in the store would close. Whitten continued that if he went to the meeting on Monday, November 19, he would be fired. The first statement was sufficient to create an impression of Respondent's surveillance of Jesse Meade's union activities, and was an implied interrogation as to whether or not he had signed a union card, both in violation of Section 8(a)(1). The second was an unlawful threat of store closure if the Union got in. The third is violative of Section 8(a)(1) as a threat of discharge for attending a union meeting, and this threat was reinforced by repetition on November 19, as related below.

(d) Whitten talked to Phillip Meade in the parking lot of the store on November 17, and asked Meade how he was going to vote on the Union, a clear interrogation into his union sympathies in violation of Section 8(a)(1). Whitten continued that if the Union came in the Respondent would lose everything it had, and he and Meade would be out of a job. This statement has not been shown to be anything more than a deliberate hypothesis constructed to threaten Phillip Meade with loss of his job if the Union were successful in organizing Respondent's employees, for the purpose of discouraging any union sympathies he might have. It is therefore violative of Section 8(a)(1) of the Act.

(e) Shirley Ousley was called into the office by Whitten. Taylor Price was present throughout much of the conversation, but denies any knowledge of what was said.[24] Whitten told Ousley that he knew about the union meeting, knew she had been there,[25] knew everyone who was there, and knew she signed a card. Each of these statements is a violation of Section 8(a)(1) consisting of the creation of an impression of surveillance of a union meeting, and an implied interrogation as to whether or not Ousley had signed a union card. Whitten then continued to violate Section 8(a)(1) of the Act by telling Ousley the Union would do employees no good, and if it came in the store would be closed and its contents moved to Respondent's Martin, Kentucky, store, another unlawful threat of store closure.

Whitten concedes that Ousley had requested a raise in the past, which was refused, but denies her testimony that, after Taylor Price left the room, he offered her the job as head cashier with a 20-cent-an-hour raise. I credit Ousley, noting there was no head cashier at the time, and find that Whitten followed up his threats with an inducement to Ousley designed to sway her from her union support. This violated Section 8(a)(1) of the Act. Whitten then again violated Section 8(a)(1) by asking her how she would vote on the Union.

Events of November 18

On the evening of November 18, Whitten conducted a meeting of between 20 and 30 store employees. According to Whitten, three or four unnamed employees told him just before the meeting what benefits the union representative had said the Union could get for employees. This testimony developed during his testimony as an adverse witness, but when recalled as Respondent's witness he testified that he got his information on what the Union might demand from a brochure given him by one of his employees. The employee went unnamed and the brochure unproduced. This conflict within Whitten's testimony causes me to view either version with caution, and I think it more probable that Respondent in fact had no definite idea what the Union would or might demand in the way of monetary benefits when Whitten met with the employees on November 18. Nevertheless, Whitten showed the employees Respondent's financial records, opined that Respondent could not afford a union, and stated that Respondent would have a clearance sale if the Union got in. I agree with the General Counsel that "clearance sale" was a euphemism for "store closure," and find that Respondent constructed a hypothesis of inability to pay on which to base a conclusion of store closure following on the heels of unionization. I find that by so doing Respondent made an unwarranted threat of store clearance predicated on union success and bereft of objective evidence that union demands would be so extreme as to cause closure. Respondent thereby violated Section 8(a)(1) of the Act, and further violated Section 8(a)(1) of the Act by pointing to employees individually and asking them if they were still in for the purpose of undermining the Union's support,[26] and polling employees to ascertain their support of the Union without proper safeguards.[27] Whitten concedes that he told the

[23] See *Ra-Rich Manufacturing Corporation*, 120 NLRB 503, 506 (1958). "Under the Act, a choice of this character may not validly be imposed upon employees and is in contravention of the Act."

[24] I find this unbelievable.

[25] I conclude that he was referring to the November 12 meeting.

[26] See *English Brothers Pattern and Foundry*, 253 NLRB 530 (1980).

[27] *Struksnes Construction Co., Inc.*, 165 NLRB 1062, 1063 (1967).

assembled employees that Mark Hurd had been discharged by Taylor Price because of his union activities. He thus made them aware of what might befall union adherents and impliedly threatened discharge in retaliation for union activities, thereby violating Section 8(a)(1). Moreover, his question posed to employees whether they would not have felt like killing Hurd if they had been in Taylor Price's position could not help but convey to them Respondent's deep-seated hostility to the Union, and coercively inhibit them in the exercise of their Section 7 rights in violation of Section 8(a)(1). I do not agree that Whitten's question was a threat of physical violence, because I believe it to be a figure of speech, as he told them it was, designed to coerce by emphasizing the strength of Respondent's antiunion feelings, rather than an overt or implied threat of physical injury. I do, however, find it to be an implied threat of unspecified reprisals short of actual violence, and unlawful on that additional ground. Moreover, Whitten's admitted questioning of employees at this meeting as to whether they were going to the November 19 meeting violated Section 8(a)(1) of the Act.

The evidence convinces me that Whitten did say at this meeting that employees would not be fired for attending union meetings, but this is self-serving and not at all dispositive of the issues of discharge for such attendance raised herein, or of statements by Whitten to the contrary after the meeting.

Events of November 19

Jesse Meade went to Whitten and asked for the next day, November 20, off for personal business. Whitten said that if he did not go to the union meeting he could have the day off,[28] but he would be fired if he did go to the meeting. Whitten likewise told Phillip Meade, on November 19, that anyone who attended the meeting at Jewel Cockerham's house that night would be fired. Whitten also asked Phillip Meade how he was going to vote. On the same day, Whitten told Shirley Ousley that he knew about the meeting at Cockerham's house that evening, and anyone who attended would be fired the next day. He asked if she was going and got an affirmative answer.

By threatening Ousley and both Meades with discharge for attending a union meeting, Respondent, by its agent Whitten, violated Section 8(a)(1) of the Act. By asking Phillip Meade how he was going to vote, and Ousley whether she was going to the meeting, Whitten coercively interrogated them in violation of Section 8(a)(1) of the Act.

All three, along with Debbie Stevens and Mark Hurd, went to the meeting with Cockerham and Union Agent Ward.

Events of November 20 and Thereafter

Ousley went into the store with Stevens and asked Deloris Hicks if they still had a job. Hicks told them they did, and called Whitten on the phone who advised them they were not fired. They went to work.

About 10 a.m., Whitten called Ousley to his office and asked who was at the meeting and what Ward had said. By so doing, Whitten again engaged in unlawful interrogation into employees' union activities, and thereby violated Section 8(a)(1). Ousley told him that she and Stevens had gone, and that he would have to fire her because she would not quit. He responded that he would not fire her, but she "would have to stick around and take it." I interpret this latter comment as a threat of unspecified reprisals because she had gone to the meeting.[29]

Ousley returned to work, but found that the other employees would neither talk to her nor give her any assistance. Whether the employees had been so instructed by Respondent, were afraid to get too close to Ousley, or were merely being uncooperative for other reasons is not shown by the evidence. However, when Ousley called Whitten and asked for help from the bagboys, the requested assistance did not materialize. I am persuaded this failure by Whitten to get her such assistance was part of what he had told her she would have to "take." At noon, Ousley left. She then called Whitten and told him she was going to the doctor. Whitten told her if she did not have a doctor's slip she should not return to work.[30]

Ousley's testimony that her husband called Whitten to report that she had no doctor's slip and was told she was not to return is uncorroborated hearsay and therefore unreliable, but I note that Respondent did not controvert the assertion that her husband called. In any event, Ousley did not return to work, but turned in her uniform to Hicks on November 21[31] with the explanation that Whitten said she was fired if she had no doctor's excuse. Hicks told her she was not fired, but Ousley repeated Whitten's statement she would be if she had no excuse. Hicks repeated she was not fired, told her Whitten had said she would not be fired if she had no excuse, and offered to get Whitten on the phone. Ousley declined the offer and repeated Whitten had told her she was fired if she did not have an excuse. Hicks then asked if she was quitting. Ousley replied, "I guess I am."

I agree with the General Counsel that Ousley was, by implication, told by Whitten that her working conditions would be more difficult, and that she may have been subjected to more onerous working conditions by Whitten's refusal to provide her with assistance. Even so, these are not the reasons her employment ended. Whitten's requirement voiced to her that she must have a doctor's permit before she could return to work is not shown to have been disparate treatment but, assuming *arguendo* that it was, Hicks was, as far as Ousley could possibly ascertain, acting as an apparent agent of Whitten when she told Ousley she was not fired. When Hicks offered to call Whitten for confirmation, Ousley had no

[28] This inducement to avoid the union meeting is not alleged as a violation, and has not been fairly litigated.

[29] This threat is not specifically alleged in the complaint, but is closely related to other allegations in the complaint and is therefore found violative of Sec. 8(a)(1) of the Act. *Ackerman Manufacturing Company*, 241 NLRB 62 (1979).

[30] I specifically do not credit Whitten's testimony to the contrary.

[31] I credit Hicks' account of this conversation. Hicks' testimony on the matter had the ring of truth, and the details as she related them appeared probable.

logical reason not to take her up on the offer. Ousley's experience of November 20 when Whitten did not fire her, even though he had earlier threatened to, gave her some reason to believe, in light of Hicks' reassurances, that his latest threat might also be inoperative. It might be argued that Ousley quit because of more onerous treatment she had received, and the prospect of receiving more, but this is not the case. Her separation came about because she simply refused to believe Hicks or to check with Whitten, preferring to adhere to the theory that Whitten's threat became operative upon her failure to provide a note from the doctor. That she may have thought she was fired does not make it so, and Hicks' attempts to dissuade her coupled with an offer to confirm with Whitten that Ousley was not fired were about all the Respondent could do in the circumstances, including Ousley's refusal to talk with Whitten as Hicks suggested. After Ousley took this strong position, Hicks' questions as to whether or not she was quitting seem quite natural and spontaneous without any insidious motive. Recognizing that Ousley had been subjected to interrogation and threats, and had been denied assistance by Whitten, I still cannot find that the General Counsel has shown by a preponderance of the evidence that she was constructively discharged. It seems clear that she could have continued to work if she so desired and that she elected to quit in the face of Hicks' assurances that she still had a job.

Separation of Jesse and Phillip Meade

Although both Jesse and Phillip Meade were scheduled to work on November 20, neither reported to work that day, but Phillip Meade called Ell Arnett and asked if he was fired. Arnett asked him what Whitten had said. Meade repeated Whitten's threat of discharge for attending the November 19 meeting, and Arnett said, "Well, I guess you are fired." I have found Arnett is not a statutory supervisor, and his remark was mere speculation based on Phillip Meade's report of Whitten's statements. Both Meades were called by Whitten that morning and requested to report to work. Both told him they were scared to. The record does not show what frightened them or whether they told Whitten of the source of their fear. Whitten told Jesse Meade that he need not worry, but Jesse Meade never returned to work. Phillip Meade does not say whether Whitten reassured him, but I conclude he did because it is obvious he was trying to get the Meades to come in and work. Moreover, Phillip Meade told Whitten he would report to work, and this indicates he likely received some assurances from Whitten. Like Jesse, Phillip never reported to work.

I find that Phillip and Jesse Meade were not constructively discharged, but voluntarily terminated themselves in spite of Whitten's entreaties. The General Counsel has not shown that Respondent intended to discharge either Meade. That Respondent threatened discharge of those who attended the November 19 meeting did not set up a self-operating sequence whereby attendance was synonymous with discharge, nor did it license employees not to return to work on a theory they had been discharged. To so hold would inevitably lead to the untenable conclusion that an employee who ceases work of his own volition after receiving a threat of discharge or other reprisal thereupon becomes a discriminatee under Section 8(a)(1) or (3) of the Act, or both. Further, Whitten's request that the Meades come to work dispelled any theory that they had been discharged, and his assurances that they had no need to fear to come to work were reasonably calculated to remove any lingering fears that they would be discharged. Finally, quitting in anticipation of discharge is not a constructive discharge.[32] Accordingly, the complaint allegation that Jesse and Phillip Meade were unlawfully terminated will be dismissed.

The Discharge of Jewel Cockerham

Jewel Cockerham was called into the office about 4 p.m. on November 16 where she was discharged by Whitten in Assistant Manager Tackett's presence. The reason proffered to her, and testified to by Whitten, was rudeness to customers. According to Whitten, the precipitating cause was a call from a woman customer, name unknown, who complained that Cockerham, a cashier, had shortchanged her, refused to acknowledge her possible error, and insinuated that the customer was lying. Whitten first dated this call about a week before the discharge, then modified his testimony to reflect that he got the call on the evening of November 15 and promised the customer he would discharge Cockerham the following day. Tackett, who testified he initially heard the customer's complaint and turned the call over to Whitten, places it 2 or 3 days before the discharge. Moreover, Tackett, who was present and presumably heard what Whitten said to the customer, offered no testimony on what Whitten told the customer. I find it somewhat suspicious that Tackett, although testifying on what he and the customer said to each other, was not asked to confirm Whitten's promise to discharge Cockerham. I find it downright unbelievable that Whitten had received "20–30" complaints about Cockerham's alleged "hateful" rudeness to customers and yet retained her without a hint of discipline. Whitten's "20–30" complaints struck me as pure manufacture. Cockerham credibly testified that she had never been talked to about any customer complaints and recalls no similar problems with customers.[33] The one time it is certain that rudeness to customers was mentioned to her was at her discharge, and the scenario of events preceding her November 16 meeting was not consistent with Respondent's established procedures for handling customer complaints. This is shown by Tackett's testimony that complaints about the other cashiers had been routinely handled by him with the offending employee. His lame explanation that the reason he referred the call to Whitten was because it was a regular customer threatening to cease doing business with Respondent is not persuasive. Neither he nor Whitten purports to know the customer's name, and neither relates any convincing evidence that the call was from a regular customer. Nor do I credit Whitten's claim that he was advised by customers that Cockerham was the "hatefulest thing that ever walked." I am persuaded that this little embellishment was adopted from customer Jake

[32] *Big G Supermarket, Inc., d/b/a Town and Country Family Center*, 219 NLRB 1098, 1106 (1975).

[33] I do not credit Whitten's contrary testimony.

Vaughn comment to Taylor Price, *after* Cockerham was discharged, that she was the "hatefulest" person on one occasion when he observed her. Whether "hatefulest" is an appellation commonly used in the area is unknown to me, but I consider the coincidence just a bit too convenient to be ignored. With respect to Vaughn, called as a witness by Respondent, it developed at hearing that he in fact heard nothing of what Cockerham said on the occasion he found her "hateful," even though he earlier testified her statements were reprehensible. A weak reed indeed for Respondent to lean on in support of its defense, and the proffer of such evidence is, in this case at least, indicative of the questionable validity of Respondent's proffered reason for discharging Cockerham. I further note that even though Respondent's asserted reason for discharge was rudeness to customers, Whitten testified to bad relations between Cockerham and other employees involving her alleged talebearing and complaining, and Respondent points this out in its post-trial brief. This attempted "piling-on" of cause in the face of a declaration of different cause casts suspicion on the first asserted cause, betrays an unexplained and suspicious departure from that cause, and convinces me that both causes advanced are the purest of pretexts. I further find that Whitten's testimony that Price[34] wanted him to fire Cockerham because of similar complaints two or three times is not credible. The otherwise unsupported testimony of Whitten and Tackett that a complaint was registered with them does not convince me that a complaint was indeed made. Assuming *arguendo* that one was, the penalty assessed appears to have been as unusual as the referral of the complaint directly to Whitten. Whitten's testimony that he talked the matter over with cashiers and thereby resolved it when other customer complaints were made contains no hint of discipline of any kind, much less a discharge. When pressed for evidence of previous discharges for rudeness, all Respondent could come up with was the dismissal of an assistant manager for rudeness to a customer on the store floor. With more than 35 rank-and-file employees on the work force, it is highly improbable that none of them was ever complained of by a customer for rudeness, yet there is no evidence of any discipline or warnings for such conduct. Finally, when an employer discharges a good employee[35] on the basis of what amounts to an anonymous call, without further investigation or any corroborating evidence, and without any previous history of either complaints or warnings for such conduct, it suggests that there is some other underlying reason for the discharge.

The other reason in Cockerham's case was, I find, her role as the leading union activist among Respondent's employees. She set up the first meeting, recruited others to attend, and thereafter continuously solicited employees to sign union authorization cards. The other unlawful conduct of Respondent detailed hereinabove, occurring in a space of a very few days, clearly shows the intensity of Respondent's hostility to union activity and Respondent's determination to root out and discourage such activity. The discharge of Cockerham almost simultaneously with the initial interrogation of Hurd, at a time when Respondent knew there was union activity afoot among its employees, has the strong appearance of an opening move in Respondent's antiunion campaign. The failure of Respondent's purported reason for discharging Cockerham gives rise, in the overall context of strong hostility and other unfair labor practices, to a fair inference of discriminatory motive and gives substance to that appearance.[36]

On the foregoing, I conclude and find that the General Counsel has shown by a preponderance of the evidence, both direct and circumstantial, that Respondent discharged Cockerham as part of its whirlwind campaign to discourage union activity among its employees. By so doing, Respondent has violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The following employees constitute a unit appropriate for collective bargaining:

> All full-time and regular part-time employees employed by Respondent at its Prestonsburg, Kentucky facility, excluding all office clerical employees, and all professional employees, guards, the store manager, the assistant store manager, and all other supervisors as defined in the Act.

4. At all times since November 15, 1979, and continuing to date, the Union has been the exclusive representative of all the employees within said appropriate unit for purposes of collective bargaining.
5. By discharging Jewel Cockerham, Mark Hurd, and Larry Prater for the purpose of discouraging employee union activities, Respondent violated Section 8(a)(3) and (1) of the Act.
6. By polling employees on November 18, 1979, by individually asking them if they still wanted the Union, Respondent interrogated its employees for the purpose of undermining the Union's support and thereby violated Section 8(a)(1) of the Act.
7. By coercively interrogating employees about their union activities and sympathies and those of other employees, Respondent violated Section 8(a)(1) of the Act.
8. By threatening employees with discharge and other reprisals because they engaged in union activity, Respondent violated Section 8(a)(1) of the Act.
9. By creating an impression of surveillance of union meetings and the union activities of its employees, Respondent violated Section 8(a)(1) of the Act.
10. By engaging in surveillance of a union meeting with its employees in attendance, Respondent violated Section 8(a)(1) of the Act.

[34] He does not specify which Price. Neither Carl nor Taylor Price testified on this point.

[35] Cockerham credibly testified that both Whitten and Tackett had expressed great satisfaction with her work several times, and Whitten acknowledged she was a good cashier.

[36] *Shattuck Denn Mining Corporation (Iron King Branch)v. N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966).

11. By threatening employees with physical injury if they engage in union activity, Respondent violated Section 8(a)(1) of the Act.

12. By instructing an employee not to talk to other employees about the Union, Respondent violated Section 8(a)(1) of the Act.

13. By offering an employee a promotion and wage increase in order to induce her to refrain from union activities, Respondent violated Section 8(a)(1) of the Act.

14. By threatening to close the Prestonsburg, Kentucky, store if employees selected the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

15. The unfair labor practices set forth hereinabove are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

16. Respondent has not engaged in any other unfair labor practices not specifically found herein.

THE REMEDY

My recommended Order will require Respondent to offer unconditional reinstatement to Jewel Cockerham, Mark Hurd, and Larry Prater and make them whole for all wages lost as a result of their unlawful discharge, such backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950); and *Florida Steel Corporation*, 231 NLRB 651 (1977).[37] The adequacy of any offers of reinstatement or reemployment previously made to these employees is a matter to be properly resolved in compliance proceedings.

The General Counsel contends that the issuance of a bargaining order is warranted because of the scope and severity of Respondent's unfair labor practices. I agree with the complaint allegation that Respondent's egregious conduct has precluded the holding of a fair election among the employees involved herein, and that a bargaining order is warranted.[38] Accordingly, I shall recommend that a bargaining order issue, effective November 16, 1979, when Respondent commenced its unlawful conduct.[39]

I further find that Respondent's violations of the Act were sufficiently egregious to warrant a broad cease-and-desist order.[40]

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[41]

The Respondent, Price's Pic-Pac Supermarkets, Inc., Prestonsburg, Kentucky, its agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Union, or any other labor organization, by discharging employees or otherwise discriminating in any manner with respect to their tenure of employment or any term or condition of employment.

(b) Coercively interrogating employees concerning their and other employees' union activities and desires.

(c) Polling employees at group meetings for the purpose of determining their support for the Union without proper safeguards and for the purpose of undermining support for the Union.

(d) Threatening employees with discharge and other reprisals if they engage in union activities.

(e) Threatening to close the Prestonsburg, Kentucky, store if employees select the Union as their collective-bargaining representative.

(f) Threatening employees with physical injury if they engage in union activity.

(g) Engaging in surveillance of union meetings or employees' union activities.

(h) Giving employees the impression that their union activities and meetings are under surveillance.

(i) Instructing employees not to discuss the Union with other employees.

(j) Offering employees promotions and/or wage increases to induce them to refrain from union activities.

(k) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Upon request, recognize and bargain with the Union as the exclusive representative of all employees in the unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a written, signed agreement:

> All full-time and regular part-time employees employed by Respondent at its Prestonsburg, Kentucky facility, excluding all office clerical employees, and all professional employees, guards, the store manager, the assistant store manager, and all other supervisors as defined in the Act.

(b) Offer to Jewel Cockerham, Mark Hurd, and Larry Prater reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of the discrimination against them in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

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[37] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[38] *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

[39] *Trading Port, Inc.*, 219 NLRB 298 (1975).

[40] Cf. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[41] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(d) Post at its Prestonsburg, Kentucky, facility copies of the attached notice marked "Appendix."[42] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that these notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply with herein.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

[42] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage membership in Food Store Employees Union, Local 347, United Food and Commercial Workers International Union, AFL-CIO-CLC, or any other labor organization, by discharging any of our employees or in any other manner discriminating against them in regard to their tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their or other employees' union activities or desires.

WE WILL NOT threaten our employees with discharge, physical injury, or other reprisals because they engage in union activities.

WE WILL NOT threaten to close our Prestonsburg, Kentucky, store if our employees select a union to represent them.

WE WILL NOT instruct our employees not to discuss the Union with other employees.

WE WILL NOT poll employees at group meetings as to their support for the Union without adequate safeguards or for the purpose of undermining support for the Union.

WE WILL NOT engage in surveillance of employees' union meetings or activities, nor WILL WE say anything to give you the impression we are engaging in any such surveillance.

WE WILL NOT offer employees promotions or wage increases as an inducement to refrain from union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Food Store Employees Union, Local 347, United Food and Commercial Workers International Union, AFL-CIO-CLC, as the exclusive bargaining representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody that understanding in a written, signed agreement. The bargaining unit is:

> All full-time and regular part-time employees employed by the Employer at its Prestonsburg, Kentucky facility, excluding all office clerical employees, and all professional employees, guards, the store manager, the assistant store manager, and all other supervisors as defined in the Act.

WE WILL offer Jewel Cockerham, Mark Hurd, and Larry Prater immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of earnings they may have suffered by reason of the discrimination against them, together with interest computed on any such backpay.

All our employees are free to join Food Store Employees Union, Local 347, United Food and Commercial Workers International Union, AFL-CIO-CLC, or any other labor organization.

PRICE'S PIC-PAC SUPERMARKETS, INC.